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CONGRESSIONAL TESTIMONY

**Statement of
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“Promoting Innovative Policing Strategies without Busting the Federal Budget”

Introduction

My name is David Muhlhausen. I am Senior Policy Analyst in the Center for Data Analysis at The Heritage Foundation. I thank Chairman Patrick J. Leahy, Ranking Member Jeff Sessions, and the rest of the committee for the opportunity to testify today. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.¹

My testimony focuses on the following points:

- Out-of-control federal spending;
- Testing and disseminating innovative policies;
- Innovative policing strategies; and
- Leveraging assets through collaboration.

Out-of-Control Spending

While the goal of reducing crime is admirable, Congress’s penchant for subsidizing the routine activities of state and local law enforcement continues the federal government’s march toward fiscal insolvency. The Congressional Budget Office (CBO) recently warned Congress, again, that the trajectory of the federal budget is on an unsustainable course.² Yesterday, the General Accountability Office confirmed this diagnosis.³ For fiscal year 2009, the federal government reached the largest deficit—annual budget short

falls—as a share of gross domestic product (GDP) since the close of World War II.⁴ For fiscal year 2010, the deficit is expected to be the second largest since World War II.⁵ The national debt—the sum of all previous deficits—is set to reach 67 percent of GDP by the end of fiscal year 2010.⁶ Last year, the CBO warned that these “Large budget deficits would reduce national savings, leading to more borrowing from abroad and less domestic investment, which in turn would depress economic growth in the United States. Over time, the accumulation of debt would seriously harm the economy.”⁷

While the deficit and debt is driven largely by entitlement spending—Medicare, Medicaid, and Social Security—Congress’s fondness for subsidizing the routine responsibilities of state and local law enforcement—a traditional responsibility of state and local governments—and all other programs advocated in Congress only move the nation closer to fiscal insolvency. In fiscal year 2009, Congress appropriated almost \$6 billion in state and local law enforcement assistance grants, including almost \$1.6 billion for the Community Oriented Policing Services (COPS).⁸ Nearly all of this funding is dedicated to activities outside the scope, expertise, and responsibility of the federal government.

The passage of the 1994 Crime Act marked a troubling milestone in the history of federal assistance for state and local law enforcement. Previously, federal assistance focused on helping state and local governments test innovative ideas, such as providing funding for demonstration programs. The 1994 Crime Act shifted federal assistance away from testing innovative ideas and towards subsidizing the routine operations of state and local law enforcement.⁹ Unfortunately, COPS and similar Department of Justice grant programs encourage state and local officials to shift accountability for local crime toward the federal government when they fail to devote adequate resources to fighting crime.¹⁰ This shift in responsibility is problematic because under our system of constitutional federalism almost all ordinary street crime is the primary responsibility of state and local government.

In addition, research by both The Heritage Foundation and the U.S. Department of Justice found that the COPS program is ineffective.¹¹ Contrary to its sponsors’ promises, COPS did not come close to actually putting 100,000 additional officers on the street.¹² Further, The Heritage Foundation found that the ineffectiveness of COPS grants awarded to large cities may be due to their misuse, with grants awarded to large cities used to supplant the cities’ own funding for local police expenditures.¹³ Supplanting occurs when federal funds are used to replace local funds, such as when federal funds intended for hiring additional police officers are instead used to pay the salaries of currently employed officers. This finding is supported by multiple audits conducted by the Department of Justice. Its Office of the Inspector General (OIG) found that cities failed to hire the number of officers required, and did not comply with other grant conditions.¹⁴ More importantly, Heritage Foundation evaluations have uniformly found that COPS grants had little to no impact on crime rates.¹⁵

Given that public safety from ordinary street crime is almost exclusively the responsibility of state and local governments, and in light of the severe burden of the

federal government's debt, state and local governments need to be weaned off their relatively recent dependence on federal funding for the provision of local law enforcement.

Testing and Disseminating Innovative Policies

The federal government has a history of producing and coordinating research and information sharing when the states are unable to do so in their individual capacities. When it comes to testing crime policies, many state and local law enforcement agencies do not have the same level of access to knowledge and information about ground-breaking policies as accessed by the federal government. For example, a given state may have only one or two large cities where it can collect crime data and test urban crime-reduction strategies. As a result, the states are often not in a position to test innovative policies in multiple jurisdictions.

As will become abundantly clear in this testimony, the federal government has played a crucial role in funding and evaluating law enforcement demonstration projects. Several of the innovative policing and leveraging strategies presented below received Department of Justice support for experimental and quasi-experimental evaluations.¹⁶

Innovative Policing Strategies

New law enforcement strategies have been developed to reduce crime. Beginning in the 1970s and early 1980s, law enforcement agencies began to develop alternatives to the traditional police model that emphasized motorized patrol, rapid response to calls for service, and retrospective investigation of crimes.¹⁷

Police officers serve as the frontline forces in preventing and deterring crime in America. The combined efforts of aggressive and intelligent local policing can reduce crime. But effective policing at the state and local levels does not require funding from the federal government. Policymakers can encourage more effective policing by focusing on results and proven strategies, rather than on only spending more money.

A review of the policing research by Professors David Weisburd and John E. Eck suggests a few innovative approaches that have proven results. Problem-oriented policing, "hot spots" policing, and focusing on repeat offenders can effectively reduce crime.¹⁸ Unlike broader strategies that concentrate on community relations, these three approaches share a common focus of targeting criminogenic factors, such as high-risk locations and repeat offenders.

Problem-Oriented Policing. In the problem-oriented policing strategy, the police develop a systematic process for inquiring into the nature of problems and then develop specific tactics to address these problems.¹⁹ Police officers engaged in problem-oriented policing do not simply respond to calls for service with an arrest or engage in public relations activities with the community. Instead, the officer takes steps to define the specific problem, whether it is purse snatching or gang activity, and to identify its causes.²⁰ After analyzing the problem, the officer then develops a plan to resolve the problem. By using this methodology, officers may be able to prevent further occurrences by solving the root

causes. For example, officers may encourage the community to exert more control over unruly youth to reduce gang activity.

Problem-oriented policing has been successful in some cities.²¹ During the 1990s, the Jersey City Police Department, in partnership with Rutgers University's Center for Crime Prevention Studies, and with the assistance of the National Institute of Justice implemented and evaluated a problem-oriented policing strategy intended to reduce violent crime.²² An experimental evaluation in Jersey City, New Jersey, found that problem-oriented policing was effective at reducing crime.²³ With the assistance of researchers, the police matched 24 neighborhoods based on their similarities on a number of demographic and related factors. By random assignment, these neighborhoods were selected for problem-oriented policing or traditional patrols. Problem-oriented policing interventions, such as aggressive order maintenance and crime prevention changes in the physical environment, reduced reported crimes and citizen emergency calls.

Another problem-oriented policing evaluation, using a less rigorous quasi-experimental design, found some evidence of success in Richmond, California.²⁴ During the mid-1990s, the Richmond Police Department targeted gun-related, drug-related, and gang-related violence through innovative enforcement and prevention strategies, including inter-agency collaboration. After the strategy was implemented, Richmond experienced a more than one homicide per month decrease.

“Hot Spots” Policing. “Hot spots” policing uses crime mapping technology to correlate the commission of crimes with the geographic location and time (time of day and day of week) at which they were committed. This enables police departments to focus resources where they are most needed. Some experimental and quasi-experimental studies indicate that hot spots policing can reduce the number of calls citizens must make for police service.²⁵

A hot spots policing approach, incorporating some elements of problem-oriented policing, in Lowell, Massachusetts, underwent an experimental evaluation.²⁶ With the assistance of researchers, the police matched 17 pairs of crime and disorder plagued locations based on their similarities on a number of demographic and related factors. By random assignment, these problem neighborhoods were selected for problem-oriented policing or routine policing strategies. All of the hot spots neighborhoods experienced environmental changes and aggressive order maintenance activities, including “cleaning and securing vacant lots, razing abandoned buildings, improving street lighting, adding video surveillance, performing code inspections of disorderly taverns, and the like” and “making arrests for public drinking, arresting drug sellers, and performing ‘stop and frisks’ of suspicious persons.”²⁷ Compared to the control group locations, hot spots locations experienced decreases in assaults, robberies, and burglaries, while there was no difference in larceny-thefts and disorders/nuisances. Further analysis indicates that the intervention did not cause crime to spill over into surrounding neighborhoods.

Focusing on Repeat Offenders. Two randomized experiments indicate that a strategy of focusing on high-risk repeat offenders leads to the successful arrest and incarceration of

such offenders.²⁸ For example, the Metropolitan Police Department of Washington, D.C., created the Repeat Offender Project (ROP) in the early 1980s.²⁹ ROP consisted of officers specifically tasked with capturing career criminals. The experimental evaluation received support from the National Institute of Justice and a private funder. While the experimental evaluation did not measure the impact of ROP on crime rates, ROP was found to increase the likelihood of the arrest and prosecution of career offenders.

Leveraging Assets through Collaboration

Law enforcement agencies should not view themselves as isolated entities tasked with combating crime. Through the building of partnerships to more effectively leverage assets, law enforcement officials can develop innovative strategies that have greater potential for reducing crime. The coordination of tactics with other law enforcement agencies, probation and parole agencies, prosecutors, and community organizations means that each can take advantage of each other's strengths to reduce crime. Two such approaches are "pulling levers" partnerships and state and local law enforcement assistance in enforcing federal immigration law.

*Pulling Levers.*³⁰ Based on deterrence and problem-oriented policing, the "pulling levers" approach recognizes that chronic offenders frequently use drugs in public, violate their probation, and have outstanding warrants for their arrest.³¹ Thus, chronic offenders are exposed to ample opportunities for law enforcement to "pull every lever" to crack down on them. In order to leverage available enforcement actions, this approach has utilized inter-agency collaboration among federal, state, and local police agencies, probation and parole agencies, and prosecutors. In addition to inter-agency collaboration, it incorporates the use of research and data analysis to assess the nature of crime problems being addressed.

In Boston, Massachusetts, during the 1990s, Operation Ceasefire recognized that Boston's violent crime problem was disproportionately concentrated among gang members.³² Operation Ceasefire consisted of the Boston Police Department, Massachusetts probation and parole agencies, the Suffolk County District Attorney, the U.S Attorney, the Bureau of Alcohol, Tobacco, and Firearms (ATF), community groups, and other organizations.³³ During meetings with gang members, the Operation Ceasefire taskforce promised the gang members that if they continued their violence, their actions would provoke an immediate and intense response. The task force used early prosecutions to show gang members how they could avoid the same punishment.³⁴ The working group also campaigned systematically to explain to gang members the consequences of their violent actions. The gang members were told that every legally available sanction would be used to punish them for committing violent crimes.

In addition, probation and police officers began to share information and patrol together to produce mutual benefits. Previously unknown to the police, probation officers had important information not only on which gang members were on probation, but also on the terms of their probation (e.g., curfews and area restrictions). For probation officers, the presence of the police allowed for instant arrest of gang members who violated the conditions of their probation.³⁵ This on-the-spot sanction meant that gang members could

no longer ignore the terms of their probation.

A quasi-experimental evaluation of Operation Ceasefire funded by the National Institute of Justice found that the intervention was associated with a 63 percent decrease in the rate of youth homicides.³⁶ Further, Operation Ceasefire was associated with a 25 percent reduction in the rate of gun assaults and a 32 percent reduction in the rate of shots-fired calls for service.

Federal prosecutors can play a key, but limited, role by prosecuting crimes that involve truly national interests, and their actions may have contributed marginally to the success of Operation Ceasefire. But state governments should not, for example, rely on the federal government to provide stiff sanctions for violent crimes. In fact, such a strategy may backfire. Relying on federal sentencing laws allows state governments to abdicate their primary responsibility for providing public safety. Members of criminal gangs and other wrongdoers would no longer need to take state law enforcement as seriously as they should. In 2004, the federal government arrested about 141,000 (1 percent) of the 14 million suspects arrested in the United States.³⁷

Sadly, Boston's Operation Ceasefire was ended in the late 1990s, apparently the victim of its own success, the transfer of experienced police officers from the program, and battles among the police, ministers, and criminologists to claim credit for the program's success.³⁸ With the incidence of violent crime having risen in 2006, Boston officials revived the program.³⁹

Communities suffering from gang crime can use Boston's Operation Ceasefire as a model. In Chicago, Project Safe Neighborhoods (PSN)—a federal program—coordinated the activities of federal, state, and local law enforcement and used pulling levers—style warnings to offenders with a history of gun violence and gang membership. Compared to similar neighborhoods, a quasi-experimental evaluation found that neighborhoods receiving the PSN intervention experienced a reduction in gun-related and gang-related homicides.⁴⁰

In addition, the pulling levers and problem-oriented policing approaches were implemented in Stockton, California, and Rockford, Illinois, have undergone quasi-experimental evaluations.⁴¹ In Stockton, an inter-agency task force, called Operation Peacekeeper, attempted to reduce gun homicides by targeting gang-involved offenders. A Department of Justice-sponsored evaluation found that Operation Peacekeeper was associated with a reduction in gun homicide rates.⁴² Rockford developed a pulling levers strategy to address open-air drug markets. According to a Department of Justice sponsored evaluation, the strategy appears to be associated with reductions in nonviolent crimes, while the intervention had no effect on violent crimes.⁴³

By improving coordination among criminal justice agencies, developing partnerships with the community, and a no-nonsense approach to pulling every lever available to deter and incapacitate violent criminals, other communities may be able to replicate the success of the “pulling levers” strategy.

Immigration Enforcement Partnerships. Section 287(g) of the Immigration and Nationality Act (8 U.S.C. § 1357(g)) provides a proper example of how local law enforcement can partner with federal authorities (in this case, U.S. Immigration and Customs Enforcement (ICE)) to enforce federal immigration laws and reduce crime. Section 287(g) functions as a “force multiplier” for an under-resourced ICE.⁴⁴ As of February 2009, 67 state and local law enforcement agencies were enrolled in the voluntary program.⁴⁵ The provision allows state and local agencies to enter into assistance compacts with the federal government so that they have the authority to investigate, detain, and arrest aliens on civil and criminal grounds. Specifically, local law enforcement agencies operating under 287(g) assist in the process of removing from the country illegal aliens arrested for crimes. Previously, when a local law enforcement officer detained an individual who could not demonstrate legal presence in the U.S., the officer would notify the federal government and wait for them to retrieve the individual. All too often, the federal government would fail to take custody of the individual, thus setting in motion the individual’s release. This inaction effectively meant the federal immigration law was not being enforced. Subsection (g)(9) of section 287 makes any participation by the states in this program strictly voluntary. Thus, participating in the program fits naturally with a proper constitutional view of state sovereignty as well as state and local jurisdiction over crime that is truly local in nature. Under section 287(g), state and local authorities may determine based on local needs and data whether and to what extent immigration violations correlate with other criminal activity such that participating in deportation will decrease the incidence of local crime. According to Heritage Visiting Fellow Matt Mayer, states and localities do not need permission to enforce federal immigration law.⁴⁶

In 2009, the U.S. General Accountability Office (GAO) found that of the 25 of 29 program participants reviewed, about 43,000 aliens had been arrested.⁴⁷ ICE detained approximately 34,000, put about 14,000 of those apprehended in removal proceedings, and assembled about 15,000 of those detained to be voluntarily deported.⁴⁸ The remaining 5,000 arrested aliens were either released or sent to federal or state prisons for felony offenses.⁴⁹

The GAO also concluded that that ICE lacked internal controls.⁵⁰ Specifically, the GAO found that the

program objectives have not been documented in any program-related materials, guidance on how and when to use program authority is inconsistent, guidance on how ICE officials are to supervise officers from participating agencies has not been developed, data that participating agencies are to track and report to ICE has not been defined, and performance measures to track and evaluate progress toward meeting program objectives have not been developed.⁵¹

Despite these issues, the successful performance of the 287(g) program can be measured by the number of immigration-law violators who were arrested and deported. The program should be subjected to a properly designed and scientifically rigorous evaluation to measure its effects empirically, but local law enforcement agencies report crime reductions resulting from participation in the program.⁵² The ability of 25 program participants to arrest and begin the removal process of so many immigration offenders demonstrates its effectiveness and justifies continued support for the program.

Yet instead of focusing on improving the oversight of the 287(g) program, the current Administration has taken actions to undermine the benefits for participating agencies by mandating that local prosecutors must prosecute illegal aliens for the underlying crime instead of processing them for removal.⁵³ By forcing 287(g) participants to start a costly and lengthy criminal process instead of beginning removal proceedings, the Administration is ensuring that local law enforcement will be less likely to participate in the program. The new mandate needlessly and counter-productively drains the resources of local law enforcement.

Conclusion

While state and local law enforcement resources wax and wane as the priorities of state and local officials change, the states have fully within their powers the ability to effectively allocate existing personnel and other resources to strategies that have proven track records of success. With the national debt expected to reach 67 percent of GDP by the end of fiscal year 2010, the federal government can no longer afford to subsidize the routine activities of state and local law enforcement. Such subsidies fall outside the responsibilities of the federal government. The federal government has contributed to identifying what works in law enforcement. However, under America's system of constitutional federalism, innovative and effective state and local law enforcement should never be made dependent on the federal government.

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¹Although all opinions expressed and any errors herein are my own, my Heritage colleagues Brian Walsh, Jena Baker McNeill, and Matt A. Mayer contributed much to this analysis, and sections of this testimony are based on papers I co-authored with Brian Walsh and Erica Little. E.g., David B. Muhlhausen, and Erica Little, "Gang Crime: Effective and Constitutional Policies to Stop Violent Gangs," Heritage Foundation *Legal Memorandum* No. 20, June 6, 2007 at <http://www.heritage.org/Research/Crime/lm20.cfm>, and David B. Muhlhausen and Brian Walsh, "COPS Reform: Why Congress Can't Make the COPS Program Work," Heritage Foundation *Background* No. 2188, September 26, 2008, at <http://www.heritage.org/Research/Crime/bg2188.cfm>.

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⁴⁵Richard M. Stana, “Immigration Enforcement: Controls over Program Authorizing State and Local Enforcement of Federal Immigration Laws Should Be Strengthened,” testimony before the Committee on Homeland Security, U.S. House of Representatives, March 4, 2009, at <http://www.gao.gov/new.items/d09381t.pdf> (March 1, 2010).

⁴⁶For a discussion of this topic, see Matt A. Mayer, *Homeland Security and Federalism: Protecting America from Outside the Beltway* (Santa Barbara, Calif.: Praeger Security International, 2009), pp. 116–122.

⁴⁷*Ibid.*, p. 7

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰*Ibid.*

⁵¹*Ibid.*, p. 2.

⁵²*Ibid.*

⁵³Jena Baker McNeill and Matt A. Mayer, “Section 287(g) Revisions: Tearing Down State and Local Immigration Enforcement One Change at a Time,” Heritage Foundation *WebMemo* No. 2543, July 14, 2009, at <http://www.heritage.org/Research/HomelandSecurity/wm2543.cfm>.